

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1098**

**Introduced by Assembly Member Jones**

February 22, 2005

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An act to amend Section ~~1365.1~~–1365.2 of, and to add Section 1363.07 to, of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL’S DIGEST

AB 1098, as amended, Jones. Common interest developments: assessments.

*The Davis-Stirling Common Interest Development Act creates and regulates common interest developments, requires them to have a recorded declaration containing specified information, and permits them to levy assessments. The act establishes, in certain situations, voting requirements for amendment of the declaration and the levy of assessments, and requires that a common interest development be managed by an association. Existing law regulates a broad range of activities associated with statewide, local, and special elections.*

*This bill would require any association election regarding certain subjects, including, among other things, the amendment of any governing documents of the association and the membership of the governing board of the association, to comply with specified procedures relating to election rules, voting, proxy ballots, and election audits. The bill would authorize a member of the association to initiate a civil action to enforce his or her rights under these provisions, and would require a court to void the results of the election upon a finding that the election procedures were not followed. The bill would provide reasonable attorney’s fees and court*

*costs to any member of the association who initiates the civil action, and would impose a civil penalty of up to \$1,000 per violation.*

*The act also requires the association to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified.*

*This bill would require the association, including an association still under the control of a developer, to make all association records, as defined, available for inspection and copying by a member of the association, or the member's designated representative. The bill would require the association to make the records available within 3 days of receipt of the request, and would provide that these provisions apply to any community service organization or similar entity that is related to the association. The bill would make other conforming changes.*

~~Existing law requires a common interest development association to distribute a specified notice to each member of the association regarding assessments, foreclosure and nonjudicial foreclosure, payments, and meetings to discuss payment plans.~~

~~This bill would make technical nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1    ~~SECTION 1. Section 1365.1 of the Civil Code is amended to~~  
2    ~~read:~~

3    *SECTION 1. Section 1363.07 is added to the Civil Code, to*  
4    *read:*

5    *1363.07. (a) Notwithstanding any other law or provision of*  
6    *the governing documents, an election regarding any of the*  
7    *following subjects shall comply with the procedures set forth in*  
8    *this section:*

9    *(1) The amendment of any governing document.*

10    *(2) The membership of the governing board of the association,*  
11    *including special elections to fill board vacancies.*

12    *(3) The setting of a special assessment.*

13    *(4) The setting of a regular assessment in excess of the limit*  
14    *provided in subdivision (b) of Section 1366.*

1     (5) *The transfer of reserve account moneys dedicated to capital*  
2 *improvements into operating accounts dedicated to general*  
3 *operations.*

4     (6) *The annexation of property to, or the sale of the common*  
5 *area property of, the development.*

6     (b) (1) *Election rules, including nomination procedures, but*  
7 *excluding the provisions of this section, shall be developed*  
8 *jointly by the board and homeowners under the association*  
9 *rulemaking procedures of Article 4 (commencing with Section*  
10 *1357.100) of Chapter 2. The rules shall ensure equal access, at*  
11 *no cost, to all association media, newsletters, and Web sites by*  
12 *candidates who are not board incumbents and by advocates for*  
13 *points of view not endorsed by the board during a campaign. If*  
14 *the association has common area meeting space, the rules shall*  
15 *ensure meeting space, at no cost, to candidates who are not*  
16 *incumbents and to advocates for points of view not endorsed by*  
17 *the board during a campaign.*

18     (2) *Qualifications for voting shall be stated on the ballot.*

19     (3) *Ballots shall be mailed by first-class mail or delivered to*  
20 *every homeowner no less than 45 days prior to the deadline for*  
21 *voting. Ballots shall be delivered to every homeowner whether or*  
22 *not a dispute is pending between the homeowner and association.*

23     (c) (1) *In order to preserve confidentiality, a voter may not be*  
24 *identified by name, address, or lot number on the ballot. The*  
25 *association shall use as a model those procedures used by*  
26 *California counties for ensuring confidentiality of voter absentee*  
27 *ballots, including all of the following:*

28     (A) *The ballot itself is not signed by the voter, but is inserted*  
29 *into an envelope that is sealed.*

30     (B) *The first envelope is inserted into a second envelope that is*  
31 *sealed.*

32     (C) *In the upper left hand corner of the second envelope, the*  
33 *voter prints and signs his name, address, and lot or parcel*  
34 *number entitling him or her to vote.*

35     (2) *The second envelope is addressed to the neutral third*  
36 *party, who will be tallying the votes. The envelope may be mailed*  
37 *or delivered by hand. The homeowner may request a receipt for*  
38 *delivery.*

39     (3) *For the purposes of this section, a volunteer pollworker*  
40 *with the county registrar of voters, a licensee of the California*

1 *Board of Accountancy, or a notary public, not currently*  
2 *employed by or under contract to the association for any other*  
3 *compensable services, will be deemed an independent third*  
4 *party.*

5 *(4) At all times during a campaign, the sealed ballots shall be*  
6 *in the custody of the neutral third party with no direct or indirect*  
7 *financial relationship to the association board. At no time shall*  
8 *the governing board, its law firm, or property manager have*  
9 *custody of the ballots.*

10 *(5) The neutral third party with custody of the ballots shall*  
11 *verify the signatures, tabulate the votes, and certify the election*  
12 *at an open meeting of the association and its board that has been*  
13 *properly noticed to members. The meeting may be an annual,*  
14 *special, or regular meeting of the association and its board. The*  
15 *custodian of the ballots shall deliver the results to the board,*  
16 *which shall include them in the minutes of that meeting.*

17 *(6) The board shall notify all members of the association in*  
18 *writing of the voting results within 15 days of the date of the*  
19 *meeting at which the results of the vote were revealed.*

20 *(7) An affirmative vote of homeowners having not less than 2/3*  
21 *of the votes in the association is required to pass any measure*  
22 *regarding the annexation or sale of property. This affirmative*  
23 *vote requirement shall be calculated in relation to all votes*  
24 *eligible to be cast in a given election.*

25 *(8) Cumulative voting shall be applied to an election for the*  
26 *governing board of the association. "Cumulative voting" for the*  
27 *purposes of this section means a method of voting that gives a*  
28 *voter the same number of votes as there are seats to be filled on*  
29 *the governing board times the number of parcels owned by the*  
30 *member. Cumulative voting permits the voter to apply his or her*  
31 *votes for one candidate or for a selected group of candidates.*

32 *(d) Any instructions for casting a proxy ballot in an election*  
33 *shall be set forth on a separate page that the member can detach*  
34 *from the ballot and retain for his or her records for one year*  
35 *after the date of the election. The proxy holder shall vote by*  
36 *secret ballot according to the member's instructions.*

37 *(e) (1) Election ballots and the signed envelopes shall be*  
38 *stored by the neutral third party in a secure place for no less*  
39 *than one year after the date of the meeting at which the ballots*  
40 *were tallied. In the event of a recount or other challenge to the*

1 *election process, the association shall, upon written request,*  
2 *make the ballots available for public inspection.*

3 *(2) Confidentiality of ballots, including proxy ballots, shall be*  
4 *maintained during a recount.*

5 *(f) A member of the association may initiate a civil action to*  
6 *enforce his or her rights under this section. Upon a finding that*  
7 *the election procedures of this section, including the adoption of*  
8 *rules under Article 4 (commencing with Section 1357.100) of*  
9 *Chapter 2, were not followed, a court shall void the results of the*  
10 *election. Any member who initiates a civil action shall be entitled*  
11 *to reasonable attorney's fees and court costs, and the court may*  
12 *impose a civil penalty of up to one thousand dollars (\$1,000) for*  
13 *each violation.*

14 *SEC. 2. Section 1365.2 of the Civil Code is amended to read:*

15 *1365.2. (a) (1) The association, including an association still*  
16 *under the control of a developer, shall make ~~the accounting~~*  
17 *~~books and records and the minutes of proceedings of the all~~*  
18 *association records available for inspection and copying by a*  
19 *member of the association, or the member's designated*  
20 *representative, as provided by this section. The association shall*  
21 *make the records available within three days of receipt of the*  
22 *request. The provisions of this section apply to any community*  
23 *service organization or similar entity, as defined in paragraph*  
24 *(3) of subdivision (c) of Section 1368, that is related to the*  
25 *association, and this section shall operate to give a member of*  
26 *the community service organization or similar entity a right to*  
27 *inspect and copy the records of that organization or entity*  
28 *equivalent to that granted to association members by this section.*

29 *(2) A member of the association may designate another person*  
30 *to inspect and copy the accounting books and records and the*  
31 *minutes of proceedings on the member's behalf. The member*  
32 *shall make this designation in writing.*

33 *(b) (1) The association shall make ~~the accounting books and~~*  
34 *~~association records and the minutes of proceedings~~ available for*  
35 *inspection and copying in the association's business office within*  
36 *the common interest development.*

37 *(2) If the association does not have a business office within the*  
38 *development, the association shall make ~~the accounting books~~*  
39 *~~and association records and minutes of proceedings~~ available for*

1 inspection and copying at a place that the requesting member and  
2 the association agree upon.

3 (3) If the association and the requesting member cannot agree  
4 upon a place for inspection and copying pursuant to paragraph  
5 (2), or if the requesting member submits a written request  
6 directly to the association for copies, the association may satisfy  
7 the requirement to make the ~~accounting books and association~~  
8 ~~records and the minutes of proceedings~~ available for inspection  
9 and copying by mailing copies of the requested records to the  
10 member by first-class mail within 10 days of receiving the  
11 member's request. The association may bill the requesting  
12 member for its actual, reasonable costs for copying and mailing  
13 requested documents. The association shall inform the member  
14 of the amount of the copying and mailing costs before sending  
15 the requested documents.

16 (c) (1) Except as provided in paragraph (2), the association  
17 may withhold or redact information from the ~~accounting books~~  
18 ~~and association records and the minutes of proceedings~~ for any  
19 of the following reasons:

20 (A) The release of the information is reasonably likely to lead  
21 to identity theft. For the purposes of this section, "identity theft"  
22 means the unauthorized use of another person's personal  
23 identifying information to obtain credit, goods, services, money,  
24 or property.

25 (B) The release of the information is reasonably likely to lead  
26 to fraud in connection with the association.

27 (C) The information is privileged under law.

28 (2) Except as provided by the attorney-client privilege, the  
29 association may not withhold or redact information concerning  
30 the compensation paid to employees, vendors, or contractors.  
31 Compensation information for individual employees shall be set  
32 forth by job classification or title, not by the employee's name,  
33 social security number, or other personal information.

34 (d) (1) The ~~accounting books and association records and the~~  
35 ~~minutes of proceedings of an association~~, and any information  
36 from them, may not be sold, used for a commercial purpose, or  
37 used for any other purpose not reasonably related to a member's  
38 interest as a member. An association may bring an action against  
39 any person who violates this section for injunctive relief and for  
40 actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from the ~~accounting books and association records and the minutes of proceedings~~ pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this section.

(e) A member of an association may bring an action to enforce the member's right to inspect and copy the ~~accounting books and association records and the minutes of proceedings of the association~~. If a court finds that the association unreasonably withheld access to the ~~accounting books and association records and the minutes of proceedings~~, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to ~~five hundred one thousand dollars (\$500)~~ (\$1,000) for each violation.

(f) For the purposes of this section "association records" includes all of the following:

- (1) Accounting books and records.
- (2) Agendas and minutes of meetings or other proceedings.
- (3) Signed contracts to which the association is or has been a party or where association assessments provide payment for services.
- (4) Invoices, receipts, check registers, canceled checks, purchase orders, accounting statements, and bank statements.
- (5) Any document that can be used to verify any financial report issued by the association, its committees, its auditor, or its developer.
- (6) Common area maintenance records.
- (7) Membership lists.
- (8) Any item listed in paragraphs (1) to (7), inclusive, held by, in the possession of, in the name of, or otherwise connected with any committee of the association or community service organization or similar entity.

~~1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least~~

12-point type. An association distributing the notice to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

“NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Sections 1366 and 1367.1 of the Civil Code)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements,



1 ~~it may not record a lien on the owner's property until it has~~  
2 ~~satisfied those requirements. Any additional costs that result from~~  
3 ~~satisfying the requirements are the responsibility of the~~  
4 ~~association. (Section 1367.1 of the Civil Code)~~

5 ~~At least 30 days prior to recording a lien on an owner's~~  
6 ~~separate interest, the association must provide the owner of~~  
7 ~~record with certain documents by certified mail, including a~~  
8 ~~description of its collection and lien enforcement procedures and~~  
9 ~~the method of calculating the amount. It must also provide an~~  
10 ~~itemized statement of the charges owed by the owner. An owner~~  
11 ~~has a right to review the association's records to verify the debt.~~  
12 ~~(Section 1367.1 of the Civil Code)~~

13 ~~If a lien is recorded against an owner's property in error, the~~  
14 ~~person who recorded the lien is required to record a lien release~~  
15 ~~within 21 days, and to provide an owner certain documents in~~  
16 ~~this regard. (Section 1367.1 of the Civil Code)~~

17 ~~The collection practices of the association may be governed by~~  
18 ~~state and federal laws regarding fair debt collection. Penalties can~~  
19 ~~be imposed for debt collection practices that violate these laws.~~

## 20 21 PAYMENTS

22  
23 ~~When an owner makes a payment, he or she may request a~~  
24 ~~receipt, and the association is required to provide it. On the~~  
25 ~~receipt, the association must indicate the date of payment and the~~  
26 ~~person who received it. The association must inform owners of a~~  
27 ~~mailing address for overnight payments. (Section 1367.1 of the~~  
28 ~~Civil Code)~~

29 ~~An owner may dispute an assessment debt by giving the board~~  
30 ~~of the association a written explanation, and the board must~~  
31 ~~respond within 15 days if certain conditions are met. An owner~~  
32 ~~may pay assessments that are in dispute in full under protest, and~~  
33 ~~then request alternative dispute resolution. (Sections 1366.3 and~~  
34 ~~1367.1 of the Civil Code)~~

35 ~~An owner is not liable for charges, interest, and costs of~~  
36 ~~collection, if it is established that the assessment was paid~~  
37 ~~properly on time. (Section 1367.1 of the Civil Code)~~

1                    ~~MEETINGS AND PAYMENT PLANS~~

2  
3     ~~An owner of a separate interest that is not a timeshare may~~  
4 ~~request the association to consider a payment plan to satisfy a~~  
5 ~~delinquent assessment. The association must inform owners of~~  
6 ~~the standards for payment plans, if any exist. (Section 1367.1 of~~  
7 ~~the Civil Code)~~  
8     ~~The board of directors must meet with an owner who makes a~~  
9 ~~proper written request for a meeting to discuss a payment plan~~  
10 ~~when the owner has received a notice of a delinquent assessment.~~  
11 ~~These payment plans must conform with the payment plan~~  
12 ~~standards of the association, if they exist. (Section 1367.1 of the~~  
13 ~~Civil Code)”~~